

PT 01-44

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**HOPE HAVEN
OF DeKALB COUNTY
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No. **00-PT-0038**
 (99-19-0038)
P.I.N: **08-15-101-046**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. James Stoddard of Klein, Stoddard, Buck and Waller on behalf of Hope Haven of DeKalb County (hereinafter the “applicant”).

SYNOPSIS: This proceeding raises the following issues: first, whether applicant qualifies as an “institution of public charity within the meaning of Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-3 *et seq.* (hereinafter the “Code”); and second, whether real estate identified by DeKalb County Parcel Index Number 08-15-101-046 (hereinafter the “subject property”) was “exclusively used for charitable or beneficent purposes ...,” as required by Section 15-65(a), during any part of the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the DeKalb County Board of Review (hereinafter the “Board”) on February 16, 1999. The Board reviewed the Application and recommended to the Illinois Department of Revenue

(hereinafter the "Department") that the requested exemption be granted. The Department, however, denied the exemption by means of a determination, dated March 2, 2000, which found that the subject property was not in exempt ownership and not in exempt use. Applicant filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's determination be modified to reflect that the subject property be exempt from real estate taxation for 39% of the 1999 assessment year.

FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1-A and 1-B.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 1-B.
3. The subject property, located at 1145 Rushmore Drive, DeKalb, IL 60115, was being developed for use as a homeless shelter as of August 12, 1999. Dept. Ex. No. 1-A; Applicant Ex. No. 15.

B. Applicant's Organizational And Financial Structure

4. Applicant is an Illinois Not For Profit Corporation organized for purposes of providing shelter and related social services to homeless persons within DeKalb County. Applicant Group Ex. No. 1.

5. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service on November 20, 1990. Applicant Ex. No. 6.
6. Applicant has no capital stock or shareholders. Its fiscal year runs from July 1 through June 30 of each calendar year. Applicant Ex. No. 14.
7. An audited financial statement discloses that applicant obtained revenue from the following sources, and incurred the following expenses, during its 1999 and 2000 fiscal years:

SOURCE	1999	2000	SUM¹	% of TOTAL²
REVENUES				
Grants	\$ 94,248.00	\$ 123,398.00	\$ 217,646.00	56%
United Way	\$ 8,900.00	\$ 9,600.00	\$ 18,500.00	5%
Fundraising	\$ 234.00	\$ 507.00	\$ 741.00	<1% %
Cash Donations	\$ 43,985.00	\$ 47,214.00	\$ 91,199.00	23%
Contributed Materials	\$ 17,010.00	\$ 17,148.00	\$ 34,158.00	9%
Contributed Services	\$ 8,400.00	\$ 8,800.00	\$ 17,200.00	4%

1. The above figures are derived from the audited financial statements admitted as Applicant Ex. No. 14. These statements present applicant's financial structure on the basis of fiscal, rather than calendar, years. The Property Tax Code, however, defines the term "year" as meaning "calendar year" (35 ILCS 200/1-155). Because applicant's fiscal year (July 1 through June 30) does not conform to a "calendar year" (January 1 through December 31), it is necessary to present applicant's fiscal structure on the basis of combined figures for its 1999 and 2000 fiscal years. Thus, for example, \$217,646.00 in grant revenues is equal to the sum of \$94,248.00 (1999 grant revenues) + \$123,398.00 (2000 grant revenues).

2. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the fourth column. Thus, $\$217,646.00 / \$391,110.00 = .5565$ (rounded four places past the decimal) or 56%.

Interest Income	\$ 3,103.00	\$ 3,962.00	\$ 7,065.00	2%
Program Services	\$ 0.00	\$ 4,601.00	\$ 4,601.00	1%
TOTAL REVENUES	\$ 175,880.00	\$ 215,230.00	\$ 391,110.00	100%
EXPENSES				
Program Services	\$ 147,602.00	\$ 226,743.00	\$ 374,345.00	88%
Management & General	\$ 20,802.00	\$ 26,045.00	\$ 46,847.00	11%
Fundraising	\$ 3,538.00	\$ 2,977.00	\$ 6,515.00	2%
TOTAL EXPENSES	\$ 171,942.00	\$ 255,765.00	\$ 427,707.00	100%

Id.

C. Applicant's Programs

8. Applicant operates two separate programs that benefit homeless persons within DeKalb County. The first, called "emergency shelter," is for individuals and families who require short-term assistance before they obtain permanent housing. The second, entitled "transitional shelter," is for families that need a greater array of services over a relatively longer term. Applicant Ex. No. 14.

9. The emergency shelter program is designed for crisis management. Its basic goals are to: (1) provide meals, shelter and supportive services that ameliorate an immediate need for temporary shelter; and, (2) enable program participants to become stabilized so that they can find more permanent shelter within 90 days. *Id.*; Tr. pp. 25-26, 31, 52.

10. Applicant does not deny anyone access to services from the emergency shelter program for financial reasons. Nor does it refuse to provide anyone with

services from that program if they experience a legitimate crisis which lasts for more than 90 days. Tr. pp. 51-53.

11. The transitional housing program is family-oriented and designed for longer term case management. Its overall goal is to provide intensive educational programs, life skills workshops and other supportive services that are intended to enable a person to become self sufficient over a period of 24 months. Tr. pp. 32, 38.
12. Most of the transitional housing clients start off in applicant's emergency shelter program, where they are first stabilized and then evaluated to determine whether they would benefit from the services applicant offers in the transitional housing program. Tr. pp. 33-34.
13. No one is refused admission to, or services from, the transitional housing programs for financial reasons. However, applicant expects those who have stabilized to the point of being able to maintain employment to pay a monthly service fee. Tr. pp. 32-33, 36-38.
14. Applicant imposes this fee in order to promote personal responsibility but bases the amount thereof on a sliding scale that is determined by a person's income. Tr. pp. 37-39.
15. Most clients pay between \$50.00 and \$60.00 in monthly fees, although some pay the maximum of \$200.00. Others pay no fee because either: (1) they have no income for reasons beyond their control; or, (2) applicant would prefer that they not work so they can concentrate on their education. Tr. pp. 34-35, 37-38.

16. Applicant does not expel anyone from the transitional housing program if they become unable to pay fees because of an unavoidable job loss during the course of their stay. Applicant will, instead, require the individual to find another job or enroll in a full-time educational program. Tr. p. 52.

D. Applicant's Ownership and Use of the Subject Property

17. Applicant acquired ownership of the subject property via a warranty deed dated December 15, 1998. Applicant Ex. No. 3.

18. The subject property was unimproved as of the date of purchase. Applicant was, however, working on structural plans with an architect at that time. Applicant Ex. No. 7; Tr. pp. 48-50.

19. Applicant did not receive completed specifications from its architect until April 1, 1999. It could not break ground as soon as it received these specifications because it lacked necessary special use permits. Applicant Ex. No. 7; Tr. pp. 49-50.

20. Applicant received the requisite permits in August of 1999 and broke ground on August 12, 1999. It then proceeded with construction throughout the remainder of 1999 and assumed occupancy in January of 2000. Applicant Ex. No. 15; Tr. pp. 24, 48.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from real estate taxes for 39% of the 1999 assessment year. Accordingly, under the reasoning given below, the determination by

the Department that the subject property does not qualify for such exemption under 35 ILCS 200/15-65(a) should be modified. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by “institutions of public charity” is exempted from real estate taxation, provided that such property is “actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65(a). The statutory requirements for this exemption are, in this context, that: (1) the property be owned by an entity that qualifies as an “institution of public charity;” and, (2) the property be actually and exclusively used for charitable purposes.” *Id*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

This record establishes that the subject property was actively being developed for use as a homeless shelter as of August 12, 1999. Such uses are consistent with ones that fulfill applicant’s organizational purposes, which are to provide shelter and other related assistance to the homeless. Therefore, the threshold question herein is whether applicant dispenses those services in a manner consistent with that of a charitable institution.

By definition, a charitable institution operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v.

Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations), *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

Providing shelter and related support services to homeless persons certainly serves the public interest. Thus, applicant would probably qualify for exempt status if it provided all of its services free of charge. However, the fees applicant charges for the services that it provides in its transitional housing program could be viewed as financial “obstacles” prohibited by Korzen.

Charging service fees does not, *ipso facto*, defeat exempt status so long as applicant accommodates those who are unable to pay. Small v. Pangle, 60 Ill.2d 510, 518 (1975). The testimony of applicant's executive director, Lesly Wicks, establishes that applicant imposes service fees only in cases where clients are able to pay because their situations have stabilized to the point where they can maintain employment which provides them with a regular and dependable source of income. (Tr. pp. 33, 36). Ms. Wicks' testimony further proves that applicant bases its services fees on a sliding scale that is directly linked to a client's income and does not evict or otherwise refuse to provide services to those who are genuinely unable to pay. (Tr. pp. 34-35, 37-38, 52). Under these circumstances, then, I fail to see how applicant's service fees constitute the type of "obstacles" prohibited by Korzen. Therefore, that portion of the Department's determination which found that the subject property was not owned by a duly qualified "institution of public charity" should be reversed.

Concerning the exempt use requirement, it is first noted that the adaptation and development of real estate for charitable or other exempt purposes can constitute exempt use in some circumstances. *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt); *with*, People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract which lie fallow throughout relevant tax year, held exempt). *See also*, Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt).

Here, applicant was legally required to obtain appropriate special use permits before commencing construction on the subject property. Accordingly, it was legally impossible for applicant to have engaged in actual adaptation and development of the subject property before it received such permits. Consequently, applicant is not legally entitled to have the subject property exempted from real estate taxation for any period which occurred while this prohibition was in effect.

Because applicant did not break ground until August 12, 1999, I conclude that the aforementioned proscription did not end until that date. Consequently, the subject property was not in exempt use, as a matter of law, during that 61% of the 1999 assessment year which transpired between January 1, 1999 and August 11, 1999. I do, however, conclude that pursuant to Weslin Properties, *supra*, that the subject property was in exempt use during that 39% of the 1999 assessment year which took place between August 12, 1999 and December 31, 1999. Therefore, the Department's determination in this matter should be modified to reflect an exemption for that period.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by DeKalb County Parcel Index Number 08-15-101-046 be exempt from real estate taxes for 39% of the 1999 assessment year under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

July 30, 2001
Date

Alan I. Marcus
Administrative Law Judge